Downtown housing is popular in many cities—but in some places it just can't get built.

It's not the market that's at fault. It's the regulations.

A few years ago, I reviewed a land-use code that contained more than 100 pages, including endless lists of permitted and conditional uses, special districts, tables, charts, cross-references, definitions, and other minutiae. Some cities require city council hearings for certain projects. Others require onerous permit fees, impact fees, long processing times, or special reviews.

What sensible developer would try to tackle that mess in order to build housing units downtown?

If we are to recast downtowns as places for new investment, we must clean up or even clean out outdated, unnecessary, or burdensome regulations. Regulations can and should be simple and easy to read—even by people unschooled in the arcane language of zoning.

An architect-translator shouldn't be needed.

Regulations should set the bar, and set it high, so that good developers can feel confident that their investment is protected. This was one of the original purposes of zoning: to protect land values.

Developers don't mind standards. It is uncertainty in the decision-making process that upsets them most.
Forming Regulations

By Mark Hinshaw, FAICP

What it takes to encourage downtown housing.

Above: FAR allows a mix of uses, while setting basic levels of intensity that a city considers appropriate. Below: A sample design guideline showing a city's expectations for new development.

One piece of a strategic package

Far too many cities are under the mistaken impression that by merely adopting a plan or changing a code, they will automatically attract new development. But most developers seek out communities with a solid financial commitment, not just lip service. New regulations and standards must be a part of an overall set of strategies that include capital improvements, tax incentives, and tools such as tax increment financing.

It's especially important for cities to help assemble property. Cities that have seen immediate results in their downtowns have used the acquisition and resale of strategic parcels to jump-start new development.

Many cities have also provided structured parking as a part of new development. This step alone has often made the difference between a feasible project and a stalled one. Cities have to be willing to spend money up front in order to realize long-term enhanced tax revenues.
Grand old office buildings are being converted to housing along Chicago's South Michigan Avenue. Among them is the Britannica Center, built in 1924. Plans call for more than 240 condominium units there.

A good attitude

In most communities, single-family subdivisions, strip malls, and office parks are allowed by right at the edge of town, so the cards are stacked in favor of outward, lateral development. But some jurisdictions are determined to make it easier to develop downtown because infrastructure there is more cost-effective and transit service can be supported; the tax base benefits as a result. These cities realize that low-rise, dispersed, outward development does not pay its own way.

Bellevue, Washington, has used traffic calculations to show that urban residential development can be assessed relatively low impact fees compared to the fees imposed on outlying development.

Tacoma, Washington, has reduced its long downtown code to about 10 succinct pages. The city is so committed to collaboration and smooth permitting that it offers to refund permit fees if the process takes more than the allotted time. No fees have been returned to date.

Portland, Oregon, has a centralized permit counter that allows coordinated, expedited processing. San Diego fast-tracks urban residential projects through the permitting system. Some jurisdictions have assigned staff members to assist in the development process; they serve as central coordinators and advocates, ensuring that the process has as few snags as possible.

Creating urban residential districts

When cities started exploring the notion of urban, mixed use development in the early 1980s, the regulatory response was often to create mixed use districts, which allow both residential and commercial development. However, property owners pegged the value of their land to commercial use and that meant the land was priced too high for residential uses. As a result, few, if any, residential developments were built without a subsidy.

A more effective approach is to create districts in which a mix of uses can occur, but to weight the potential development in favor of residential uses. This approach clearly signals the city's intent and keeps land prices in line with normal ratios of land cost to unit cost for residential development. It also prevents landowners from speculating that someone will cash them out to build an office tower.

Sometimes cities must rezone an area to realign property values. Often the land supply then shifts towards residential use. Some property owners have resisted this step by opposing what they call "downzoning," but in many cases they have been able to sell their properties faster.

An ironic twist is that in many cities, down-
town residential development is now out-bidding office development. As the economy shifts away from concentrations of high-rise office towers (in a sense, the factories of the late 20th century), land is becoming more valuable for residential use. This is seen in both new development and in the adaptive reuse of older, formerly Class B and Class C office buildings into apartments, condominiums, and hotels.

Finally, most downtown residents look for places with a true neighborhood ambiance: quiet at night, neighborliness, local shops, services, cafes, and eyes on the street. Accordingly, cities need to carve out districts that are predominantly residential but allow an abundance of other uses as well.

**Simplifying codes**

Land-use codes need not be elaborate and convoluted. The length of existing codes is due, in part, to detailed lists of uses, but design standards add verbiage as well. Portrayed in code form, design standards seem drained of their intent, as if it were possible to quantify good design.

Instead, cities should boil down quantitative requirements to a bare minimum and put provisions that address the quality of development in a separate document—one that is adopted into the municipal code by reference so it has the force of law. Essentially, the hard-core code for a downtown needs only the following elements:

**Uses.** Because it is the nature of downtowns to embrace virtually any type of function, the code should not list permitted, conditional, and special land uses. If properly crafted, design standards can mitigate the effects of most uses, so long as they are fully contained within structures. And if the downtown has been planned in a way that identifies infrastructure needs, individual uses should not have to prove that they can be accommodated.

Instead, a city could create a short list of uses that should be excluded from downtown. Heavy industry is one likely category, as are open storage lots and maximum security prisons. This short list of prohibited uses should, ideally, fit into less than a single page of text.

**Floor area ratio.** Advocates of form-based codes have begun to recommend eliminating FAR (floor area ratio) calculations in favor of bulk and dimensional standards. While this approach may be valid in low-rise areas, it is not logical in high-density, high-rise, mixed use downtown districts. This blanket dismissal of a completely appropriate tool is misguided for several reasons.

First, developers use FAR as an indicator of the development potential of a site. It is a simple calculation that they can do without an architect's help. The calculation offers a degree of predictability and certainty. It allows for mixing uses by specifying the outer limit of intensity but not specific densities, as the tool of dwelling units per acre does.

In fact, density as expressed in dwelling units per acre has a built-in incentive to create larger units. There is no advantage to building smaller units, since the yield is identical. With FAR, the developer decides the size and mixture of units:

**USE LIMITATIONS**

All uses shall be allowed, unless prohibited below.

**Prohibited:**

- Adult establishments
- Billboards
- Drive-through businesses along pedestrian-oriented streets
- Gasoline service stations
- Industrial uses
- Mini-storage on the street level
- Outdoor sales or rental of boats, vehicles, or equipment
- Outdoor storage of materials and equipment (except during construction)
- Repair of vehicles, unless entirely within a building
- Sewage treatment plants
- Surface parking on pedestrian-oriented streets
- Work release facilities
- Wrecking yards
- Vehicle washing, unless located within a building or parking structure
- Any other use that the planning director determines not to comport with the intent of the district

A concise list of prohibited uses can be more effective than a long list of allowable uses.

Forty to 50 feet in height is a threshold
for wood frame construction. Another break point is 75 feet, because above that true high-rise construction codes are triggered. Once in the high-rise category, there is a minor change at around 160 feet, but beyond that there are no significant thresholds—although other rationales may make sense.

For many years, the city of Philadelphia did not allow buildings to exceed the height of the statue of William Penn atop city hall. Washington, D.C., uses the height of the Capitol dome as the maximum.

San Francisco limits the height of buildings that could potentially shadow certain parks. Seattle and other cities require setbacks on buildings over a specified height along designated view corridors to ensure that a key aspect of community character is protected.

Vancouver, British Columbia, has advanced a regulatory concept that allows for greater height if the bulk of a building (as expressed in floor plate size) is decreased. In the last five years, Vancouver has seen the emergence of a distinctive, pencil-like residential tower—very slender (with floor plates less than 7,000 square feet), but very tall. Ostensibly, this concept allows for views between buildings (Vancouver also has a tower spacing distance regulation) and a development pattern in which very tall towers are surrounded by an "understory" of row houses. The combination of sleek, glassy towers with sidewalk-hugging homes is not only striking but adds immeasurably to the city's sense of street life.

**PARKING.** For better or worse, parking supply drives the form and location of development. Developers depend on adequate parking to get financing, and cities carefully review and monitor parking lots and structures.

Over the last two decades, Robert Cervero of the University of California at Berkeley has researched the effect of parking on development and behavior. He suggests that cities should use parking ratios strategically to create compact, transit-oriented development. He advocates maximum parking standards rather than minimums. His studies show that it is possible to change commuting patterns by limiting the parking supply, even in suburbs.

As it happens, downtowns with constrained parking supply—and relatively high parking fees—often enjoy greater retail activity. That is because people will choose to park once and then walk to multiple destinations. Or they will elect to use transit. There is nothing like a direct hit to the wallet to alter human behavior.

**Design standards and guidelines**

Good design standards and guidelines are important to the character and quality of downtown development, but they should not be prescriptive. Each design standard and guideline should state an intention, so that various solutions may be evaluated against it.

Just as the basic regulations should concentrate on a short list of subjects, so should design standards. If they are too long and complicated, developers can be discouraged. Some will be small, local firms that are not necessarily familiar with the state of the art in regulations.

Standards should be written in plain English with short, declarative sentences. If technical terms are used, they should be defined in a glossary. The overall attitude expressed by the standards should be to inspire people to do good work, not merely to toe the line on numerical details. If numbers are used at all, they should be expressed in ranges, to allow for built-in flexibility.

Within downtown settings, standards and guidelines should generally focus on the street-level environment—the setting that has the most impact on the public. The upper levels of buildings can be left to the private sector, except in cases where rooflines affect the skyline. In that case, a few standards can address shape, lighting, and the need to conceal communications or mechanical equipment.

Factors to concentrate on in the design standards:

**The base.** The base of a building may include commercial uses, parking, or both—although in general, parking should not be allowed to abut the sidewalk without an intervening use. It is important that the base contribute positively to the experience at street level—and not just directly in front of the building, but as seen from across the street and down the block.

Many cities subject the base to "set-to" lines or maximum setback lines. In some locations, additional sidewalk width is desired—although it is possible to go overboard with this require-